

CHAPTER 87

EDUCATION - PUBLIC SCHOOLS

HOUSE BILL 22-1252

BY REPRESENTATIVE(S) Bennett, Bird, Boesenecker, Esgar, Gray, Hooton, Jodeh, Kipp, Lindsay, McCormick, Ricks;
also SENATOR(S) Kirkmeyer and Jaquez Lewis, Fields.

AN ACT

**CONCERNING PROVISIONS OF PUBLIC SCHOOL CONTRACTS, AND, IN CONNECTION THEREWITH,
SPECIFYING REQUIREMENTS AND LIMITATIONS FOR SUCH PROVISIONS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 22-1-135 as follows:

22-1-135. Terms and conditions in public school contracts - definitions.

(1) AS USED IN THIS SECTION:

(a) "CONSTRUCTION" MEANS THE PROCESS OF BUILDING, ALTERING, REPAIRING, IMPROVING, OR DEMOLISHING ANY PUBLIC STRUCTURE OR BUILDING OR ANY OTHER PUBLIC IMPROVEMENTS OF ANY KIND TO ANY REAL PROPERTY THAT IS OWNED OR LEASED BY A CONTRACTING ENTITY OR BY A PUBLIC SCHOOL AND IS USED FOR THE DIRECT BENEFIT OF OR IN SUPPORT OF A PUBLIC SCHOOL.

(b) "CONTRACTOR" MEANS ANY PERSON HAVING A CONTRACT WITH A PUBLIC SCHOOL CONTRACTING ENTITY. "CONTRACTOR" DOES NOT INCLUDE AN EMPLOYEE OF A PUBLIC SCHOOL CONTRACTING ENTITY OR OF A PUBLIC SCHOOL TO BE DIRECTLY BENEFITED BY OR SUPPORTED BY A PUBLIC SCHOOL CONTRACT.

(c) "PUBLIC SCHOOL CONTRACT" MEANS ANY TYPE OF AGREEMENT, REGARDLESS OF WHAT IT MAY BE CALLED, ENTERED INTO BETWEEN A PUBLIC SCHOOL CONTRACTING ENTITY AND A CONTRACTOR WHERE THE PRINCIPAL PURPOSE IS TO ACQUIRE SUPPLIES, SERVICES, OR CONSTRUCTION OR TO DISPOSE OF SUPPLIES FOR THE DIRECT BENEFIT OF OR IN SUPPORT OF A PUBLIC SCHOOL; EXCEPT THAT "PUBLIC SCHOOL CONTRACT" DOES NOT INCLUDE AN AGREEMENT FOR THE ACQUISITION OF PROFESSIONAL SERVICES, AS DEFINED IN SECTION 24-30-1402 (6).

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(d) "PUBLIC SCHOOL CONTRACTING ENTITY" MEANS AN ENTITY THAT IS AUTHORIZED TO CONTRACT FOR THE DIRECT BENEFIT OF OR SUPPORT OF A PUBLIC SCHOOL AND ENTERS INTO A PUBLIC SCHOOL CONTRACT. "PUBLIC SCHOOL CONTRACTING ENTITY" INCLUDES A SCHOOL DISTRICT AND, TO THE EXTENT AUTHORIZED BY LAW, A PUBLIC SCHOOL, AN ADMINISTRATIVE UNIT, AS DEFINED IN SECTION 22-20-103 (1), A PARTICIPATING PROVIDER, AS DEFINED IN SECTION 22-100-101, OR ANY OTHER ENTITY THAT IS AUTHORIZED TO CONTRACT FOR THE DIRECT BENEFIT OF OR SUPPORT OF A PUBLIC SCHOOL.

(2)(a) A TERM OR CONDITION IN A PUBLIC SCHOOL CONTRACT IS VOID AB INITIO IF THE TERM OR CONDITION:

(I) REQUIRES THE PUBLIC SCHOOL CONTRACTING ENTITY TO INDEMNIFY OR HOLD HARMLESS ANOTHER PERSON;

(II) SPECIFIES THAT THE PUBLIC SCHOOL CONTRACTING ENTITY AGREES TO BINDING ARBITRATION OR TO ANY OTHER BINDING EXTRA-JUDICIAL DISPUTE RESOLUTION PROCESS;

(III) SPECIFIES THAT THE PUBLIC SCHOOL CONTRACTING ENTITY AGREES TO LIMIT LIABILITY OF ANOTHER PERSON FOR BODILY INJURY, DEATH, OR DAMAGE TO PROPERTY OF THE PUBLIC SCHOOL CONTRACTING ENTITY OR A PUBLIC SCHOOL DIRECTLY BENEFITED BY OR SUPPORTED BY THE PUBLIC SCHOOL CONTRACT THAT IS CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PERSON OR OF THE PERSON'S EMPLOYEES OR AGENTS;

(IV) PURPORTS TO WAIVE, ALTER, OR LIMIT THE APPLICATION OF ANY PROVISION OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24;

(V) PURPORTS TO WAIVE, ALTER, OR LIMIT THE APPLICATION OF THE "STUDENT DATA TRANSPARENCY AND SECURITY ACT", ARTICLE 16 OF THIS TITLE 22, THE PROVISIONS OF SECTIONS 6-1-713 AND 6-1-713.5 RELATING TO PROTECTION AND DISPOSAL OF PERSONAL IDENTIFYING INFORMATION, THE PROVISIONS OF ARTICLE 73 OF TITLE 24 RELATING TO SECURITY BREACHES AND PERSONAL INFORMATION, OR, UPON IT TAKING EFFECT ON JULY 1, 2023, THE "COLORADO PRIVACY ACT", PART 13 OF ARTICLE 1 OF TITLE 6; OR

(VI) CONFLICTS WITH COLORADO LAW OR RULES PROMULGATED PURSUANT TO COLORADO LAW OR CONFLICTS WITH ANY PROVISION REQUIRED TO BE INCLUDED OR DEEMED TO BE INCLUDED IN A PUBLIC SCHOOL CONTRACT BY SUBSECTION (2)(d) OF THIS SECTION AS OF THE DATE THE CONTRACT IS EXECUTED.

(b) IF A PUBLIC SCHOOL CONTRACT CONTAINS A TERM OR CONDITION THAT IS VOID AB INITIO UNDER SUBSECTION (2)(a) OF THIS SECTION, THE PUBLIC SCHOOL CONTRACT IS OTHERWISE ENFORCEABLE AS IF IT DID NOT CONTAIN THE VOID TERM OR CONDITION.

(c) ALL PUBLIC SCHOOL CONTRACTS, EXCEPT FOR CONTRACTS WITH ANOTHER GOVERNMENT, ARE GOVERNED BY COLORADO LAW NOTWITHSTANDING ANY CONTRACT TERM OR CONDITION TO THE CONTRARY.

(d) A PUBLIC SCHOOL CONTRACT MUST INCLUDE PROVISIONS, AND IF SUCH PROVISIONS ARE NONETHELESS INADVERTENTLY OR OTHERWISE OMITTED, SHALL BE DEEMED TO INCLUDE PROVISIONS, THAT:

(I) STATE THAT, SUBJECT TO THE REQUIREMENTS OF SECTION 24-91-103.6 PERTAINING TO CONTRACTS FOR THE CONSTRUCTION AND DESIGN OF PUBLIC WORKS PROJECTS, ANY AND ALL CONTRACTUAL FINANCIAL OBLIGATIONS OF THE PUBLIC SCHOOL CONTRACTING ENTITY THAT ARE PAYABLE AFTER THE CURRENT FISCAL YEAR ARE CONTINGENT ON MONEY TO PAY THE OBLIGATIONS BEING APPROPRIATED, BUDGETED, AND OTHERWISE MADE AVAILABLE;

(II) REQUIRE THE CONTRACTOR TO COMPLY WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, RULES, AND REGULATIONS IN EFFECT WHEN THE CONTRACT IS EXECUTED OR THEREAFTER ESTABLISHED, INCLUDING, WITHOUT LIMITATION:

(A) LAWS, RULES, AND REGULATIONS APPLICABLE TO DISCRIMINATION AND UNFAIR EMPLOYMENT PRACTICES; AND

(B) LAWS, RULES, AND REGULATIONS THAT REQUIRE THE PROTECTION OF PERSONAL IDENTIFYING INFORMATION, INCLUDING STUDENT PERSONAL IDENTIFYING INFORMATION, AS DEFINED IN SECTION 22-16-103 (13), SUCH AS THE FEDERAL "FAMILY EDUCATION RIGHTS AND PRIVACY ACT", 20 U.S.C. SEC. 1232g, THE "STUDENT DATA TRANSPARENCY AND SECURITY ACT", ARTICLE 16 OF THIS TITLE 22, THE PROVISIONS OF SECTIONS 6-1-713 AND 6-1-713.5 RELATING TO PROTECTION AND DISPOSAL OF PERSONAL IDENTIFYING INFORMATION, THE PROVISIONS OF ARTICLE 73 OF TITLE 24 RELATING TO SECURITY BREACHES AND PERSONAL INFORMATION, OR, UPON IT TAKING EFFECT ON JULY 1, 2023, THE "COLORADO PRIVACY ACT", PART 13 OF ARTICLE 1 OF TITLE 6; AND

(III) REQUIRE THE CONTRACTOR TO PERFORM ITS DUTIES AS AN INDEPENDENT CONTRACTOR, TO PAY WHEN DUE ALL APPLICABLE EMPLOYMENT TAXES AND INCOME TAXES FOR ITS EMPLOYEES INCURRED IN THE PERFORMANCE OF THE CONTRACT, AND TO PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW.

SECTION 2. Applicability. This act applies to contracts executed on or after July 1, 2022.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: April 12, 2022